

PART 3

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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SUBPART 3.1 - SAFEGUARDS

- 3.104 Procurement integrity.

**3.104-3 Definition.**

(a) The DLA **Designated Agency Ethics Official** is the General Counsel. The **chief** counsels of each DLA primary level field activity (PLFA) are designated as **Deputy Designated Agency Ethics Officials**.

**3.104-4 Statutory and related prohibitions, restrictions, and requirements.**

(a) **Prohibition on disclosing procurement information** (subsection 27(a) of the Act). Any person who is given authorized or unauthorized access to **contractor bid or proposal information** or source selection information is authorized to disclose such proprietary or source selection information regarding any DLA contracting offices' procurement of property or services to the following persons:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA / Principal Deputy Director, DLA / Deputy Director (Acquisition), DLA / **Deputy Director (Materiel Management)**, DLA ; their Executive Directors and their supporting employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

3.104-5 Disclosure, protection, and marking of **contractor bid or proposal information** and source selection information.

(a) The Executive Director, Procurement **Management**, Commanders of DLA contracting offices (see 2.101), and chiefs of contracting offices (see 2.101) have the authority to authorize persons, or classes of persons to receive **contractor bid or proposal information** or source selection information when necessary to the conduct of the procurement. The following persons are authorized access to **contractor bid or proposal information** or source selection information regarding any DLA contracting offices' procurement of property or services:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA / Principal Deputy Director, DLA / Deputy Director (Acquisition), DLA / **Deputy Director (Materiel Management)**, DLA ; their Executive Directors, and their supporting staff employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

(93) Any person or class of persons not listed in (90)-(92) above who is authorized access to automated systems contract files, contract file information, or procurement information.

3.104-6 **Disqualification.**

(b) **Disqualification notice.** The designee of the HCA for those contracting offices for whom the Executive Director, Procurement **Management**, serves as HCA (see 2.101) is:

- (1) The Commanders of DRMS, DDRE, DDRW, T-ASA, DCMDs, and DCMCI.
- (2) The Administrators, DAPSC and DNSC.

(c)(2) **Resumption of** participation in a procurement. The designee of the HCA for those contracting offices for whom the Executive Director, Procurement **Management**, serves as HCA is the same as listed in (b) above.

3.104-7 **Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.**

(a) Requests for ethics advisory opinions shall be submitted to the General Counsel, or **the appropriate Deputy Designated Agency Ethics Official**, as defined in DoD 5500.7-R, Joint Ethics Regulation.

3.104-10 Violations or possible violations.

(a)(1) When the contracting officer concludes there is no impact, with the concurrence of the chief of the contracting office and local counsel, the contracting officer may proceed with award.

(b) Local counsel shall recommend the action to be taken.

(d)(2) If the contracting officer concludes that profit on the contract or modification involved should be recaptured in accordance with the clause at FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or that the contract should be voided or rescinded in accordance with FAR 3.104-10(d)(2)(ii) and 3.705, he or she shall prepare a report documenting the facts giving rise to the conclusion that a violation of the Act has occurred. That report shall be prepared in consultation with local counsel and include the contracting officer's recommendation for the action to be

taken. When profit recapture is recommended, the contracting officer will recommend an amount to be recaptured. When rescission or voiding of the contract(s) is recommended, the contracting officer will estimate the value of the tangible benefits received and retained under the contract(s) in question. The report shall be forwarded to the General Counsel, for action.

(f) Notification shall be submitted directly to the Director, DLA by letter signed by the Commander (Administrator, DNSC or the Administrator, DAPSC) of the contracting office.

(g) The designee of the HCA for DNSC **and DAPSC**, for which the Executive Director, Procurement **Management**, serves as HCA **are** the Administrator, DNSC **and the Administrator, DAPSC**.

## SUBPART 3.3 - REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

### 3.301 General.

(b) Whenever the contracting officer finds evidence of suspected antitrust violations, he/she shall forward to local counsel, a report of information available to establish possible violation of the antitrust laws.

(b)(90) Exchange of information regarding questionable contractor business practices. Information revealed by postaward reviews, audits, or similar sources on price overcharges and other questionable business practices may be of concern to other DoD activities who conduct business with the firm involved. Sound business practices dictate that this information be made available to DoD activities upon request. Also, such information, including the name and address of the firm involved, a brief description of the questionable business practice, and the manner in which it was revealed, shall be forwarded in writing to the chief of the contracting office and cognizant DCMDS.

## SUBPART 3.5 - OTHER IMPROPER BUSINESS PRACTICES

### 3.590 Prohibition against the solicitation of "free issues."

The solicitation of supplies or services from individuals or firms at no cost ("free issues") may lead to a perception on the part of these individuals or firms that either: there is a benefit to accrue to them in the future if they satisfy the request at no cost; or that they are under an obligation to satisfy the request at no cost as a condition of receiving future Government business. These perceptions must be avoided. As a result, the solicitation of supplies or services from individuals or firms at no cost is prohibited. However, when an individual or a firm voluntarily offers to provide supplies or services at no cost, the Government may accept such offers without compensating the supplier therefor. A contract is not established in such cases as there is no consideration for the supplies or services received. In cases where the Government requires an obligation from the supplier (e.g., a warranty for the supplies or services), a no cost offer should never be accepted.

## SUBPART 3.7 - VOIDING AND RESCINDING CONTRACTS

### 3.704 Policy.

(a) For purposes of this subpart, the Head of the agency designee is the Special Assistant for Contracting Integrity (SACI), General Counsel.

### 3.705 Procedures.

(a) Reporting. The facts concerning a final conviction for any violation of 18 U.S.C. 201 -224 shall be reported by the contracting officer to the General Counsel, HQ DLA, within 20 days after the contracting officer learns of the final conviction. The report shall be signed by the contracting officer and submitted by the Commander of the reporting primary level field activity (PLFA). The report shall:

- (1) Identify and include a copy of the contracts(s) involved;
- (2) Include a copy of the judgment order evidencing or confirming a final conviction as defined in FAR 3.702;
- (3) List in detail the tangible benefits received and retained by the reporting PLFA in connection with the performance of the contract(s) which relate to the final conviction;
- (4) Provide the contracting officer's estimate of the fair value of benefits received and retained and include an explanation of how that estimate was calculated;
- (5) Include a recommendation concerning the amount to be recovered and the property to be returned as a result of action under this subpart; and
- (6) Indicate whether a report recommending debarment of the parties involved has been forwarded to the General Counsel. The contracting officer's report shall be coordinated with local counsel prior to submission to the General Counsel. After review, the General Counsel, will refer the contracting officer's report to the SACI for action. The SACI shall promptly notify the Civil Division of the Department of Justice when action is contemplated under Subpart 3.7 of the FAR.

## SUBPART 3.8 - LIMITATION ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

### 3.804 Policy.

(b) Reporting. All SF LLL and LLL-A (disclosure forms) shall be forwarded to MMPPP no later than 20 April and 20 October after each reporting period. Reporting periods shall end on 31 March and 30 September of each year. Negative reports are required.